

**MINUTES
STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL**

November 19, 2001 – Special Meeting
WSU Building 4, 3rd Floor conference room
925 Plum Street
Olympia, Washington

ITEM 1: CALL TO ORDER

Chair Luce called the meeting to order at 1:33 p.m. A quorum was present.

ITEM 2: ROLL CALL

EFSEC Council Members

Community, Trade & Economic Development	Heather Ballash
Department of Ecology	Charles Carelli
Department of Fish & Wildlife	Jenene Fenton
Department of Natural Resources	Tony Ifie
Utilities and Transportation Commission	Bob Wallis
Chair	Jim Luce
Walla Walla County	Pam Ray – via phone
Port of Walla Walla	Jim Kuntz – via phone
Columbia County	Earle Marvin – via phone

EFSEC Staff And Counsel

Allen Fiksdal	Irina Makarow
Mike Mills	Mariah Laamb
Robert Fallis, AAG, EFSEC	

Guests

Karen McGaffey, Perkins Coie	Bill Frymire, WDFW, AAG
Mike Sotak, Duke Energy	Laura Schinnell, Energy Northwest
Nan Thomas, OAH, Sumas ALJ	Chuck Lean, Wallula Generation
Brian Carpenter, Rebound	Pete Dewell, OAH
Mike Elmer, Starbuck Power	Darrel Peeples, Newport Northwest
Ron Lavigne, CFE, Wallula	Mitch Pointdexter, Duke Energy
Kirk Deal, Rebound	
Liz Thomas, Preston Gates & Ellis -	via phone

ITEM 3: APPROVAL OF MINUTES – SEPTEMBER 10, 2001 & OCTOBER 22, 2001

Chair Luce: Council, any comments or changes to the minutes before you?

Motion: To approve both sets of minutes as submitted to the Council.

Jenene Fenton: I move to approve the minutes.

Heather Ballash: I second the motion.

Chair Luce: All in favor, say I.

Council members: I.

Chair Luce: The motion passes.

ITEM 4: STARBUCK POWER PROJECT

<i>Adjudication Schedule and NPDES Permit Waiver</i>	<i>Irina Makarow EFSEC Staff</i>
<p><i>Mr. Fiksdal invited the Council to look at the draft process proposal regarding EFSEC's Application Review for the Starbuck and Wallula Projects, and the Proposal for Intervention and Expedited Hearing. Mr. Fiksdal indicated that this revised draft was different from the version discussed at the Council's Executive Committee of November 5th in one respect. The footnote on page 3 has been corrected to reflect that the comment period for the DEIS must accommodate both SEPA and NEPA requirements, and the comment period for the DEIS will be 60 days¹.</i></p> <p>Allen Fiksdal: Because of that 60-day comment period we did change this portion of the paper. In light of that change, the other change to the paper is, originally it had the first pre-hearing conference convening 15 days after the end of the DEIS period, which would have been 45 days after issuance of the DEIS and issuance of notice for adjudication. The change is that there will be a pre-hearing conference after the 30 day period for intervention, and again, there will be a second pre-hearing conference approximately 15 days after the end of the 60-day comment period, and that second pre-hearing conference the Council would consider any new intervention based on new issues that were developed through the DEIS and comments through the DEIS.</p> <p>Chair Luce: Parties will be required to raise their issues with specificity during that time frame, or will not be able to raise those issues during the hearing process, unless there is good cause shown based upon new information not reasonably available during the period set to petition for intervention.</p> <p>Allen Fiksdal: Correct. After issuance of the DEIS and Notice of the Intervention, there's a 30 day period where the Council would ask for intervention with the declaration of specificity on intervention, but again, if there are any new issues that come in the second pre-hearing conference, any party would be able to expand or intervene, but it would be based on any new issues solely brought out by the DEIS. But yes, specificity is going to be required.</p> <p>Chair Luce: To the Council for discussion, and then moving to the public, any comments from Council members at this time?</p> <p>Jenene Fenton: I think it looks great. I think it accomplishes the list of concerns that I had pertaining to insuring that the public is still going to have adequate involvement time. I'd like to adopt it. I think it's a good way to go.</p> <p>Tony Ifie: I feel comfortable with it as well. Although I have a comment on the issue I brought up about the 30-day comment period required on this SEPA DEIS with the footnotes below. It</p>	

¹ Italicized text is summarized from non-recorded conversation.

appears to me that this is a pilot project for just Wallula and Starbuck, therefore I suggest that we put the study provision up front instead of putting them in the footnotes. That is my proposal.

Chair Luce: I think, Councilperson Ifie that's a very good recommendation, because this is a pilot project and is going to be tested to see how well it works. I know we're going to have another process here in the near future looking at EFSEC standards, and whether it's possible to ask the parties, all the interested parties, environmental groups, Council for the Environment and applicants, whether they could agree upon some standards to proceed in the future. And one of the subsets of that standards discussion, hopefully, will be some continued discussion of process and then that in turn may lead to other action by the Council, but it would not be in the nature of a pilot project at that point in time. Comments from the public?

Rusty Fallis: My sense of this is that this represents a statement of the Council's intent to proceed in a particular way in it's review of these two applications and that some of the details that are set forth in here will actually be effectuated through the issuance of the pre-hearing orders. So, I suppose theoretically at a pre-hearing conference somebody could ask you to do something different and it won't be actually until you issue those orders that some of these things would take effect in a binding sense, but this is the statement of the Council's general intent to proceed in that. I just wanted to make sure everyone else understood.

Chair Luce: Thank you for that clarification.

Heather Ballash: Actually, I'm glad you said that because I was thinking that sometimes procedural issues or glitches come up that you don't know about until they get to the pre-hearing conference and you want some flexibility to respond to that, so I think saying that this is what we want this time is a good way to put it.

Pam Ray: It was my understanding, and maybe I missed something prior to getting on the telephone call, but this was not an action item, this meeting on this particular project?

Chair Luce: There's no need to apologize and you will be part of the process and I think as our legal counsel has stated, what we would be acting on today is the statement of intent of the Council to proceed and that statement would be manifested in pre-hearing orders which would yet to be decided.

Pam Ray: You would not be adopting the adjudication schedule?

Chair Luce: We will be adopting, if we choose to adopt, after hearing additional public comment, the proposal for Starbuck and Wallula intervention and expedited hearing, but again, those final decisions will actually be made in the pre-hearing order, which I hope you will be participating in.

Pam Ray: I think I understand, but this is foreign to me, and so it might take me awhile.

Allen Fiksdal: Mr. Marvin, I think you had a comment.

Earle Marvin: Just a question. Maybe someone could explain the overall net effect on the schedule for the process of adopting this way of proceeding.

Allen Fiksdal: One of the Council's processes that we had discussed at earlier meetings, and actually it's on our web site, is not to invite intervention until after the comments to the EIS are in and very near the stage of final EIS. This accelerates the intervention to some degree in that it invites intervention probably three or four months earlier than what we have diagrammed on our web page. Hopefully, this will accelerate the whole process so the Council can get to a position so they know whom the interveners are without abrogating anybody's legal ability to intervene in the process.

Earle Marvin: Does it have a net effect on shortening the entire process itself?

Allen Fiksdal: Yes. Hopefully.

Chair Luce: The other important thing it does, and we've discussed it, is that it would require parties to identify their issues with specificity at a given period of time early on, after the public comment has been made available on the draft EIS. Then if they have not identified those issues, and choose to raise issues later in time, they would be required to do so on showing of good cause based on new information. I'm not saying that parties have been reluctant to raise issues in the past, but this would help motivate everybody to get their issues on the table early on, with specificity and that in turn should help the process.

We're dealing here with a balance. From my perspective between how do we expedite a public process for siting a power plant, in this case two power plants, and how do we do that in the manner that gives full meaning to the policies underlying in the law, underlying the SEPA, and that in turn is the primary vehicle by which the public is informed of the key issues that will arise in the siting of this power plant.

So, the ongoing discussion we've had is whether this is done linearly or concurrently, and we're trying to move in as deliberative a fashion as we can, while protecting both the rights of the public to have that information available to them through the SEPA process and the desire to move siting permits along as expeditiously as possible. So it's a tough balance, and I think that the draft represents a good attempt to strike that balance and we'll have continuing discussion about it I'm sure.

Earle Marvin: Well, I would like to compliment whoever thought of the idea.

Chair Luce: She's sitting in the back. Now, the Council has given this matter a good deal of thought, but we have been benefited immensely by the help of the applicants. Liz Thomas came to us with a proposal, Darrell Peebles is here from Wallula and provided a lot of input, and Bill Frymire has been involved in reworking the original concept, it's now known as the Frymire Proposal. And the Council for the Environment has been very helpful.

Earle Marvin: Did you get full buy in from the BPA on this too?

Allen Fiksdal: Of course. Bonneville Power Administration usually doesn't have anything to do with our adjudicative process. We have agreed with them, and we are cooperating to produce the joint EIS, but that's usually the extent of BPA's interaction with EFSEC, unless BPA wants to intervene on specific issues, which they have done at times, but again, adjudication is an EFSEC process

Earle Marvin: Thank you very much, that answers my questions.

Chair Luce: Comments from the public.

Brian Carpenter: My name is Brian Carpenter. I would caution the Council about precedent setting here with this proposal. I think the second part of the proposal, which allows people to raise issues later on in the process is a good idea. I'm concerned about the request for specificity early on in the process. If you look at the potential site studies often times they are quite vague. They simply say that this merits further study or attention. Most recently the BP Cherry Point Potential Site Study came out and there are many areas where it simply says "further study is required by the applicant," or "further reports are required by the applicant." If you look at the Wallula application it was turned in with no BACT analysis and several weeks or a month later I received in the mail a several inch thick packet of amendments to that application, so at the time of the application there was great deal of information that either wasn't in there or was changed with the additional submission.

Again, the concern is, requiring people early on to meet the specificity requirement may not always be possible and I realize you are dealing with two specific projects, both of which have already turned in applications. Another example I would mention on Starbuck is there's no

water rights mitigation that has been proposed yet that I'm aware of. We understand the company is looking into water rights mitigation, but nothing is known about that at this time. It leaves open the question of how can you comment or how can you provide specificity on the water rights issue, when you don't know the applicants proposed mitigation?

Another example is the Mercer Ranch application. They were originally going to go with water-cooling and that got thrown out and now they're going to air-cooling, which presents a completely separate list of issues. So my concern is the requirement for specificity up front simply may not be possible to meet based on the information that's quite frequently in the PSS's or the ASC's. Thank you.

Bill Frymire: I am from the Attorney General's Office, representing the Department of Fish and Wildlife. On the third page, in the second paragraph down in the middle, it does say "in order to most efficiently have intervention set and specific public issues identified, potential intervening parties should have access to the draft EIS comments." In this case, on the chart, because you have a 60-day comment period, you end up having your interventions in the first half but not the latter half of your EIS comment period. So a possibility is moving your intervention to the sixth month and maybe slop over a couple weeks into the seventh month in order to allow the intervening parties to read all of the filed DEIS comments and have the benefit of all of that information. Here your initial intervention would happen before all of the DEIS comments were filed.

Allen Fiksdal: If you look at the schedule in the back, there's a circle with an X in it. I think that is in the seventh month, it would be approximately the second pre-hearing conference. That's when those issues that are brought up through the comments to the DEIS can be brought to the Council in the intervention.

Bill Frymire: And would those issues be a late intervention?

Allen Fiksdal: I think that's part of the development of this process that we're going to have to work on. It would be my thought that in the first 30 days, the agencies are going to be able to see and know pretty much what they are interested in and bring that intervention in as specific as possible in that first intervention period. I think the second time would be more for the public and if there are new comments or new issues that are raised that the agency sees through the comments to the EIS, then that would be the time to bring in those comments. That's 15 days after the end of the 60-day period.

Chair Luce: So Bill, I think maybe what Allen is saying and what I was thinking is, in a sense this is an iterative type process. The PSS and the application, and I recognize that all of the information is not there, and that's why we have this other opportunity, but the Draft Environmental Impact Statement will be out and you will be assessing that I know, and other members of the public will be as well. Then there will be a close of comments on that Draft Environmental Impact Statement, and then there will be an additional 15-day period. So, I'm assuming that Fish & Wildlife and other agencies and members of the public and Council for Environment will have framed their issues to the extent that they possibly can within that 30 days and then the next 15 days will just be a snapshot like; did we catch everything? I would think that would provide adequate opportunity so I guess what I'm saying is that I think I hear you and I think your issues have been thought of and addressed in this document.

Bill Frymire: The only comment I guess I have is I appreciate the pretty thoughtful opportunity, moving the intervention as you have it on the chart from the beginning of the fifth month, moving it a month or a month and several weeks to allow a week or two after the end of the comments so that anybody who wanted to search through all of the comments could do that

before they filed their intervention, so starting it in the sixth month or even half way through the sixth month and going through the first part of the seventh month might get you to a similar place and then you wouldn't need to have necessarily an earlier intervention and that agencies wouldn't have to go through the record twice.

Allen Fiksdal: One of the reasons that we did it this way is that the applicants have requested, or suggested that they would like to know as soon as possible who the interveners are going to be, and I think part of this is not only to have intervention known, but also the ability of the applicants to pretty well know who the interveners are going to be so they can start working with them as soon as possible. And if they don't see who is going to intervene until the seventh, middle of the seventh, almost the eighth month, then they are losing time on working with potential interveners, so I think that's the reason that we put that kind of intermediary step or the first step in, you know. Get your intervention in, it's more so the applicant can start working with the interveners, but the real specificity is going to come a little bit later.

Bill Frymire: Okay, the only concern I had was whether an agency would do a good job by reading the DEIS, take a shot at it's issues with some specificity, assuming they thought they'd captured them, if something came up in the comments, they would either have to review the whole record again, or the whole comment record – to the extent it's big, to see whether there is something they didn't get that sort of a gotcha thing. I was just trying to think of the agency's not having to do it twice if there is a possibility of it.

Allen Fiksdal: Well, you're going to be doing that anyway. You'd be looking at those comments anyway.

Chair Luce: So if it's done well the first time, which I know in your case it will be, that probably won't be a big issue.

Bill Frymire: Hopefully not, otherwise I'll be up for you again asking for time.

Chair Luce: All right. Other comments? Council for the Environment.

Ron Lavigne: Thank you, Mr. Chair. I just had a couple of comments and questions. In the question category, it's not clear to me when the Council would anticipate sending out the intervention notice. Are you anticipating that would be at the time the EIS was issued, or at some time before it? I understand it's going to be 30 days after it gets out before the deadline.

Allen Fiksdal: Simultaneously is our intent right now. As simultaneously as possible, within a day or two of each other.

Ron Lavigne: I would then suggest that it might be beneficial to try to send that notice out a little earlier just to give folks a heads up and explain that they are going to have 30 days once the EIS gets out.

Chair Luce: I think that's very reasonable to the extent we can do that. I am sure that Council will all agree that we should accommodate that need. That would help everybody.

Ronald Lavigne: There may, in fact, actually be some people who know they are going to intervene regardless of what the SEPA document says, so it may accommodate your purpose as well of getting earlier intervention in as well, and I think the discussion you just had with Mr. Frymire may have answered my other question, but I want to make sure. The issues you are anticipating would need to be identified with specificity 15 days after the comment period closes on the EIS?

Chair Luce: Well hopefully they could be identified within the 30 days, but after the comments from the draft EIS come out, yes.

Allen Fiksdal: We, as the staff, would intend to make those comments available as soon as possible to any body who wishes to have those comments, so you can review them. Again, it is a little accelerated, but we're trying to hurry in this case.

Ron Lavigne: And I appreciate your interest in accelerating it, and I guess my only comment would be that it is essentially a two week period we're talking about which is a pretty quick amount of time to have to digest comments, especially if they're lengthy and then in addition put together the list of issues, so if that could be bumped back even as little as 10 days to make it 25 days after the comment period closes I think that would make for a more workable situation, and especially will help to accomplish your goal of having these issues identified with specificity. I mean it's going to be difficult, these projects evolve over time and identifying issues with specificity is going to be difficult enough anyway at that early stage of the process, so I think if you could give folks a little bit more time to digest the comments before coming up with their issues, that would be helpful, even if it is something as small as just a 10 day extension to a 25 day. Then, this is kind of in the nature of both a question and a comment; is there a suggestion at some point that you could clarify, I'm struggling with what you mean by specificity, and how specific you are going to expect us to be. I'm assuming something saying I am reserving the right to raise all environmental issues isn't going to be specific enough, but if I say I've got concerns about the water rights, is that going to be specific, or are you looking for more.

Jim Luce: Well, Council members can speak for themselves, but hopefully there will be enough information after the PSS and the application and the Draft Environmental Impact Statement and the comments on the Draft Environmental Impact Statement could be a little more definitive that concerned about water rights. Concerned about how many acre-feet of water are being used in dry process, wet process and the impacts on wetlands associated. This is something we're all going to have to work through over time, but the idea is, when I was doing my limited practice of law it was called Notice Pleading.

Ron Lavigne: You don't want that.

Jim Luce: No, and I don't think that is in anybody's interest. I think everybody's interest is to get all the issues on the table as soon as we can, and work through them. The sooner that you know what the issues are, the sooner the applicant knows, there is always a possibility there's a couple of magic words called "stipulation and settlement," we're not adverse to that either, and the sooner that everybody knows what those issues are, they can take a look and see exactly what it is, if anything, can be done short of a full adjudicatory process.

Ron Lavigne: Then the only concern I would raise is that I would hope that the Council is appreciative of the fact that these matters, these projects do develop over time, and as an earlier speaker mentioned, even with respect to the two projects that are currently before you, there's a lot of unanswered questions, both in the potential site study and in the application. And you're asking parties to identify legal issues with specificity at a pretty early stage in the process before much opportunity has been granted for informal discovery of issues. Typically there's some opportunity to conduct some discovery in general adjudication, at least, before being required to state with specificity your final legal issues. I mean it's not that unusual to have to come up with preliminary issues early on in the process, but to the extent there are unresolved questions even during the development of the EIS process, I think it will be necessary for some parties, including Counsel for the Environment to be somewhat broad in how we state our issues, so that we're not losing issues just because there are things that haven't really been fully developed yet, through either the EIS process or we haven't had a chance to look at it through any discovery processes.

Chair Luce: Hopefully over time, if this process were to be utilized, and this is a pilot project, so I'm not saying it will be utilized, but hopefully over time if we can find a way to utilize that Preliminary Site Study to front-load, that's my choice of words, as much as the environmental issues as possible into that discussion, then that in turn will help frame the application more precisely and than in turn ought to expedite the process. But that is a separate discussion item.

Allen Fiksdal: I think we have seen this happen already in the project that we are looking at, both Wallula, Starbuck and even the other two projects that will come before us shortly have changed significantly before the application was filed, which is better than what we've seen in a couple previous applications, so we are advanced already.

Ron Lavigne: My last comment is just to thank EFSEC for the proposal. It appears to address many of the concerns that Council for the Environment raised with respect to the initial proposal and I appreciate your hard work and thought on this.

Chair Luce: Thank you.

Allen Fiksdal: Mr. Peeples wants to speak, and Mr. Lean.

Darrel Peeples: I'll be as blunt as possible. We do not like this proposal at all. I think we have had several meetings where I think we've expressed our views and I hope that you are all aware of our views on this. We disagree, and extremely, that it's going to expedite the process. It's not, I believe it's going to slow the process down and I don't think it's going to give any substantive safeguards to anyone on it, and I just picked this up when I got here today, I think Ron Lavigne made some statements with regard to specificity. I've run pre-hearing conferences with the Council trying to get specificity and I don't know if Nan has. It's very difficult to get that specificity from the interveners. I'm just telling you, that's really difficult, and I think one of the real big things I see here, you start that process late and if a party doesn't want to give specificity it's really hard to block them out. In that regard, stating in a procedure that you're going to get specificity down the line, I wouldn't count on it.

I urge an earlier intervention, you see people here, they know the issues, you've been hearing he issues, we know what they are, let's get the process going. There's no reason why we can't have intervention now. I think what we're progressing and doing is becoming hide bound in a procedure. Right now I've looked through this and there's no way you're going to get on our project when the DEIS is not going to be out until the 15th of February, we're not going to get an order from the governor until December 15th or by statute, or in the last project I had, 60 or 80 days beyond that. And I believe the new statute that was passed by the Legislature talked about making the process more timely. This is not making the process more timely, at all. I don't see any reason why we can't start the hearing process earlier. I don't see any substantive safeguards for other people.

I believe if Ron needs information, we start now. He has time to depose our people and we can get that done now. I don't think it's going to create a more timely procedure. It's going to be a hide bound delaying procedure. If there's any reason for continuances into the future for a good cause, that's one thing, but what you've really done by this is really put a huge cushion that can never be taken away with regard to when this project is going to be certified and signed off by the Governor. My impression was that the PSS meant something, and I'm probably going to get people reacting, and Mr. Carelli, it's really not sour grapes, believe me, I would not advise my client with this schedule to go through a PSS. I would not do that. That's a six to eight month process and we start all over again. You are not going to make up that time at all when it comes to getting a faster DEIS out or coming up with the issues for better consultant review. I just don't see that. I just don't think that's going to happen. We, in our situation, we filed in the

middle of August and we didn't get some other stuff in until the first part of September, but by mid-October the Council's consultant said it was good to go, so however you take a look at this Council review, you know, two months after we filed the consultant says good to go, we had all the information there. But still we don't even start to process until March 15th. Everything stops until March 15th. Nothing is happening in that situation. I just think it's a waste of time. This is, you say, a kind of experiment, it's never been done this way in the past and I think it's going to cause some real time delays, which I am just going to tell you are very critical to my client. It's just not a matter of pontificating, you are talking millions and millions and millions of dollars on this. That's what it's going to cost them. So it's a very serious thing. If I thought there would be some real significant safeguards to the public or I thought it was sound, I think I would push back at my clients, but I don't see that here. I don't see any positive thing coming out of protecting the groups. I think the most positive thing is to get the hearing going, get the pre-hearing conferences going right now, and if Ron thinks he needs depositions, we'll be giving him as much information as he wants. Take them now, but to put off the Council decision until October 15th or after and put off the Governor's decision until some time into 2003 is absolutely unacceptable, and that's not what the Legislature has, I believe, given some guidance for. Chuck [Lean] do you have anything to add?

Chuck Carelli: Maybe before you did, I would like to ask Darrell. There are a lot of people here that were not at the last executive committee meeting when we discussed this, and you outlined kind of the time frame that you envisioned. I wonder if it would be appropriate for you to briefly do that now.

Darrel Peeples: At least how I envisioned it, and Ron and I have talked about it and, you know, we envisioned intervention starting, we were hoping, the first part of November, but now I don't know when it would be.

Chuck Carelli: Can I ask what that would be triggered with?

Darrel Peeples: It would be triggered by the consultant saying it's good to go.

Chuck Lean: We agree with the Frymire proposal.

Darrel Peeples: Bill Frymire's idea, we're adopting that and we go forward on that and then we have that first pre-hearing conference and after the intervention has been done and then I think we sit and start talking schedule, at least we have people there that can bargain. Our original ideas, we would probably start sometime, we should be ready to file our pre-filed in January with a certain response time by the parties and then with a certain response, say 30 days, 30 days, 15 and get to hearing. Now Ron's going to say that that's going to push him some. Would that be fair to say?

Ron Lavigne: I will not be able to do my job representing the citizens of the State of Washington on that kind abbreviated schedule.

Darrel Peeples: And that's a negotiated matter and then he can push back on it, but at least we get going.

Chuck Carelli: Can I ask, or suggest maybe putting words in your mouth, but you would have the pre-filed 30-30-15 completed probably about the time the DEIS is completed. Is that correct?

Darrel Peeples: It could be.

Chuck Carelli: Would it be that early or that late?

Darrel Peeples: We would have our pre-filed before the DEIS is out in that situation and I'm not saying that's the situation to be adopted by the Council, is what I'm trying to get at, but that's something that's going to have to be worked out at that time and I do respect Ron a lot, but at least we work it out and get it going at that point, and we could get the hearing going, which I

think is very important. The PFEIS, that's Chuck's area, but that's not in SEPA, there's no such thing as a PFEIS. I don't see how you can really do a final EIS until the hearings close. Historically, at least my involvement in client in the last part, the EIS process tracks separately. It was considered by the Council, but it tracks separately. You know, Bob Wallis is by far more familiar with that, or at least as familiar with that as I am. I think that would be ultimately a more timely function.

Now we can argue what's reasonable and what's not, but at least we can sit down and start talking about that in December, although time is slipping and I can't remember what happened yesterday, and ultimately it would be up to the Council to decide that, but I'm very concerned with getting hide-bound by not allowing intervention or doing anything of that matter until the DEIS is out and not proceeding with the hearing until we have sent out a PFEIS, which is not even in SEPA and distribute it to every body. Again, I think that's more procedure than anything else, I don't think it accomplishes that much of substance. I really don't. I think we pretty much know what the issues are, and I can't state that more strongly.

Jenene Fenton: I understand your proposal to be; when is the first opportunity for the public not to see anything on this project that didn't come from the applicant, that has some kind of independent review? When do they get to see that? After intervention is closed, after the hearings have started, when does the public get to review and provide comments?

Darell Peeples: First of all I don't think you are going to see much change in the information that has already been provided. All the information I think is pretty much out there. This analysis, if you're referring to the draft EIS and that would be right now February 15th. I think one of the discussions before us is if anything that has not been anticipated before comes out there, I believe intervention would be appropriate if something new comes out.

Jenene Fenton: Under your proposal, if I have the time frame right in my head, you would have intervention started, closed, you have the hearing started and you have all the potential issues identified before the public has an opportunity to look at the Draft Environmental Impact statement.

Darrel Peeples: We're not going to have the hearings before the Draft Environmental Impact Statement, no. I wouldn't anticipate the hearings to start until April – May.

Jenene Fenton: When does the public have an opportunity to tell the Counsel for the Environment their concerns and issues so that they can get them on the list for intervention if the hearings have started?

Bill Frymire: I believe the Counsel for the Environment was at all the PSS and EIS scoping meetings. You've been at the scoping when we had the PSS out.

Ron Lavigne: I wasn't involved in any of the PSS scoping, I do know both projects have changed since the PSS and I think this whole line of questioning shows the problem with the applicants' proposal. The benefit is in the draft EIS, and I think Darrell is significantly overstating the lack of benefit. There will be a significant benefit to the public in being able to see for the first time an independent analysis of the environmental impacts of the application. The applicants have had all kinds of time to sit in their buildings and come up with an application that fits their needs, and that application has not been reviewed independently, and that's what the draft EIS process gets everybody, and I think it's critical, and that's why I think this proposal gets at the main concern I had raised, that it's not calling for intervention until people have at least seen the draft EIS.

I think the schedule the Council is proposing is incredibly aggressive and it will make my life extremely difficult, but it's at least something that can be worked with, unlike the proposal that is

being suggested by Darrell where the public essentially would be asked to raise their issues about these projects and their concerns in a vacuum, with only information that was provided to the public by the applicant. And I think it's critical that we have the ability to at least look at the draft EIS prior to moving forward, and I appreciate the fact that this isn't the way it was done before in terms of the EIS process, but I think the Council heard a great deal of criticism in it's past projects about delaying the EIS so far back in the adjudicative process and I think this process of getting the EIS going sooner is a great improvement and will provide very valuable information for people who may or may not elect to intervene, but at least they are going to be able to make that decision based on an independent review of the application.

Darrel Peebles: It's not going to get the EIS going faster. That's not right. This is not going to speed up the EIS process and the issues you've heard being raised right here. We have people, the primary parties that are involved, here. They can intervene now. Any issues that are raised in the draft EIS, if they are new issues, intervention can come in later, and I think based on the Blue Sky case, there is no way an applicant in their right mind is going to appose intervention. What you've done is created a schedule that's pushed the quickest time you can get it done out as far as it can, rather than trying to get the process through in a more timely fashion.

I think you've done the worst case as far as getting the time out as fast, and there's no way to make it faster now, we're not going to have a decision on this from the governor, basically up until 2003. And I don't think that's what the legislature was looking for when they said trying to do it in a timely fashion, and if you add on the time for going through the potential site study process which is in the area of about six months, that's a horrendous long process. And again I would not advise my client to go through that six-month process because we are not going to gain anything. I don't see the applicants getting much out of this. I think it's just kind of a give, give, give thing. Chuck [Lean], do you have anything to add?

Chuck Lean: Yes, a couple of things. Number one, I'm concerned about what you've done in your notice to the local governments and the Port. As I understand it, you told them there would be no vote today. Jim is shaking his head, I don't know what the staff told them, that's what they told us, don't worry there's not going to be a vote today. I'm surprised they're even both on the phone. And Pam, the County's response was, well we just saw this document ten minutes before, we don't really have time to analyze it. It seems like you could at least give them the same consideration you're talking about giving the public and let us know a little bit ahead of time what's going to happen. So, I would suggest that if you are really serious about doing something, you delay your vote until you have a chance to bring them on board and make them full participants. I know this is rather incongruous, because all the rest of us can say to hurry up, but as I mentioned before, we agree with the Frymire proposal. If that had been followed, the intervention block up here would be moved forward about two months, as I understand it. It would start to run during month three.

After that we thought that it would be possible to start the hearing two weeks into the draft EIS comment period. But in essence, what you've done here is delayed that three to three and a half months. As I understand it, the main reason for the delay is to allow a preliminary final EIS to be prepared. That's just not a SEPA document. The SEPA guidelines list the types of EIS's. There's no such thing as a preliminary final EIS, and I suggest to you the only reason we have one is because EFSEC's regulations say that the final EIS is done after the hearings, and so you wanted to follow your regulations and make up some other document ahead of time. You made it up, it's not consistent with the SEPA rules, and you are bound to follow the SEPA rules. They are put out by Ecology and they have a section in there that lists types of EIS's. You won't find

a preliminary final in there, so you end up basically delaying this process for about three months, just to let a document that's not part of the SEPA process be finished.

I wrote a letter to Mr. Luce and I would like to read part of the last paragraph: "The 2001 Legislature amended RCW 80-50-010 to add a new subsection five, which makes it the policy of the state, quote 'to avoid costly duplication in the siting process and assure that decisions are made timely and without unnecessary delay'. A preliminary final EIS is not authorized by law, it duplicates the function of the draft EIS and in view of the potential site study, the extensive application document, and the draft EIS awaiting the preparation of such a document prior to the hearing will lead to unnecessary delay. It would be ironic if the Council's first policy response to the 2001 Legislation is the establishment of a new EIS requirement, not required by law which will be duplicative and result in substantial delay in the siting process."

So, I think what you're doing, if you look at this schedule, this isn't concurrent, this is sequential. You do the EIS and the whole SEPA process and then you start the hearing process and that's I think, exactly what the Legislature of 2001, and the Legislature in probably the last two or three legislative revisions to SEPA, told you not to do. You're trying to integrate the SEPA process with your decision making process. You don't do one and then the other. So to me this process is exactly what the Legislature is trying to say not to do, and I don't see the point in it.

The public's going to be involved in, they've been involved and they will be involved all the way through this. During the hearing the public is entitled to show up and make their own comments, they don't have to be parties, they don't have to jump through the intervention, they don't have to do all of that, they can show up and make their own comments. It used to be that the idea was that then the Council could consider those in preparing the final EIS, so the final document would be done after the hearing. But now, I guess, something that looks like a law, like a final document, but can't be called one, because it would violate the Council's regulations, is done ahead of time, and I don't see the reason for that. That's all I've got to say.

Heather Ballash: I feel like I need to address Mr. Lean's last comment since it was my idea. Actually it was based on two years of working with the Department of Ecology as a lead per Community, Trade and Economic Development to amend the SEPA rules, to better integrate and environmental process with local and project permitting. And, as you recall, the whole basis for the State Environmental Policy Act is to inform the public and the parties and the decision making agency as to what the environmental impacts of a project are before they make their decision. And on that basis, my concern was right now our rules do prohibit us from issuing a final EIS until after the adjudication. When that information and that document is useful to the process in terms of providing information, not only to the Council before it makes its decision, but the parties to the process. I'm not talking just about the public, but the agencies and the other interveners in the process. And so I think it was our thought to have that information, as much as we can provide available before we went into adjudication and since our own rules prohibit issuing the final EIS, I said why can't we do an early draft of the EIS that is an initial response to the comments we receive.

I actually called the Department of Ecology and said, "Do you think there is anything in the SEPA rules that would prohibit this," prohibit circulating an early draft of the final EIS and they said, "No, we don't think there is." So, it's on that basis, and I think this does provide better integration because you have the information up front going into the adjudication. Given the fact that we've sat now through hearings on the Sumas application, both last year and this year, and parties throughout the process were pulling out that EIS and using the information in it in testimony in cross examination, I think it is a useful document in the adjudication. And I think

it's really helped them form the process, so that is the explanation for why we are where we are in that respect.

Chuck Lean: First of all, well, we could go back and forth like this for a long time, but what's going on with the whole Growth Management Act and the integration of SEPA in the Growth Management Act is, I think a totally different system than what EFSEC is. The Council doesn't decide, the Governor decides, so there has to be, at a minimum, the final EIS has to be done for the use of the Governor. Now, where you call the Council's hearing, how you would equate that with anything that happens with local government, I'm not sure that most of the local government hearing processes are either one, the beginning of an appeal, or two, part of the actual decision process by the decision maker, and in both of those cases the EIS would be done. If there were an appeal it would be done ahead of time, if the hearing is the decision process, then it would be done ahead of time, because it has to be done as part of the decision. But really, what's happened with the whole thing with the Growth Management Act is they have allowed the substitution of standards for the EIS process most of the time. I talked to one local government-hearing examiner and asked him about all of this, about what the local practice is. He said he'd never seen an EIS. Just because after the amendments, nobody prepares them, and at most what you get is some sort of mitigated DNS. So you just talk about what the local process is, I'd be surprised if you went and counted up all the State of Washington, where you would find maybe 10 EIS's done locally in one year. That's just a wild guess, but I would bet you it's something like that, and probably most of them in Seattle. So I don't know that you could look back to the local process and equate that with what's happening with EFSEC, because the two processes are really a lot different. I still come back to this gap in here of about three months that I just don't see the reason for it. You know, there's nothing that says the public has a chance to see what everybody else said in terms of comments before they comment. That's really what you're trying to do here, is you are trying to leave a gap between the end of the comments and the beginning of the hearing of at least two months. There is just no reason for that.

To wait and identify the reason for waiting as being a preliminary final EIS, and I quote, you know, Ecology would say, "well, maybe you could do an internal working document," but when you take it out front and base your schedule on it, you've made it something more than just an inside working document, you've made it a formal document, which is not there in the rules, is not consistent with the rules. I don't think you can do it.

Darrel Peeples: And I guess also, and we suggested these at one time, that the administrative draft of the DEIS, which comes out, supposed to be out by December 15th, which may be the same thing as the PFEIS, and I think there was some negatory response on that, providing that document as an administrative document to the parties might lead them and I think that's somewhat similar to an FEIS.

Chuck Lean: But I do wish you would consider my comment about notifying the local governments. I'm not sure that they were appropriately notified. I don't know, you can check with whoever talked with them, but under your schedule if you're not going to put out the intervention notice until the draft EIS is done, after you've adopted your schedule, so that you've got time to at least talk with them and allow some input before you have a vote.

Darrel Peeples: I guess if that it is a final adoption if you adopt that today, because there will be no intervention, there will be no pre-hearing conference. We're not going to have a pre-hearing conference, are we, before we have parties involved, so I think the adoption of this procedure is a final procedure for all intents and purposes, because it would mean there would be no

intervention until sometime March to April, in fact there would be no intervention until April. So there would be no pre-hearing conferences, there would be nothing adopted until that time. So, I think by adopting this policy it is essentially adopting a policy for the case, not to be something left until later, at least that's my interpretation. I don't see where you can have a pre-hearing conference to have a hearings officer or anybody involved in this until intervention.

Jim Kuntz: Mr. Chairman, this is Jim Kuntz with the Port of Walla Walla. I would like to echo Commissioner Pam Ray's comments. I was informed, as she was, that there would not be action taken today, that there would not be a vote. I was specifically told that, just like Commissioner Ray was told, so I'm a little bit dumbfounded to get back an agenda that has action item on this issue, because that is inconsistent with what I was told and what Commissioner Pam Ray was told.

Allen Fiksdal: That's true. In our discussions that I had with the Chair last week when this first came out as an action item, we discussed that this would be discussed at this meeting, that there probably wouldn't be taking any action, that's what I told the local officials.

Pam Ray: And that was because we had a conflict that I couldn't get out of, but I think this is important enough that I need to be here, so I stepped out for an hour out of another meeting because I want to be involved in this process.

Jim Kuntz: Commissioner Ray hasn't been given a lot of the background papers either on this discussion. This discussion is new to you, it's new to me.

Earle Marvin: This is Earle Marvin and I have a comment. Earle Marvin, Columbia County. What I think I would like to see, after listening to all parties thus far, would be a graphic of the time line, the graphic time line for the proposed process that shows from start to finish the sequencing, the precedence, and sort of like a critical path schedule. If you're familiar with the construction industry, critical path schedules are used to fast track construction, and I think what the process needs is a fast track approach. And I think you are trying to do that, but there seems to be a lot of confusion as to the impact to what the things you're trying to do are going to end up doing. Certainly moving the Governor's approval out to 2003 is really not desirable. If there is some way to shorten it down, I think a graphic approach, a scheduled approach, will show it. End of comment.

Allen Fiksdal: Earle, we do have sort of a graphic here with us today. I didn't send you guys the graphic, and I apologize. It was in a different file, so it was easily attached for us today. We can send that to you. It doesn't go to quite the same detail, I think, as your suggesting. Some of the issues that you're talking about the Council has been discussing for years, and essentially what we have is the Council's required, at least in my mind, to conduct two separate or distinct processes. Each has it's own process and each is a lengthy process. In some people's minds it's logical to have these in a linear fashion, where you do one and then you do the other, but that would take an extremely long time. So we are trying, have been trying for several years to find the accommodation of combining these two processes so that all parties are given an equal chance for each process, and as you can tell we're struggling, and we have struggled for a long time with this.

Earle Marvin: There are certain parts of the process that are constrained by public law. You need certain amounts of time for comments, etc. There are other parts that can be done in parallel, and I think that you need to lay this out for all to see so that you can optimize the entire process and there are computer programs that can do that for you.

Allen Fiksdal: I think what we have before us today is what we think is the most optimized process that we can come to. I don't think all parties are going to agree that this is, and maybe that's the tack we take that nobody likes it. But, that's the Council's decision.

Pam Ray: Mr. Chair, this is Pam Ray again. I'm not really sure what my role is as a voting of the Council, but what I would like to know whether we just take the oral testimony of the departments and the public and then process that, or are we an active part of the deliberation and is it an interactive Council where you lobby for or against, or what?

Chair Luce: It's very interactive.

Pam Ray: Okay.

Chair Luce: But it is also a quasi-adjudicatory process in which we act, if you want to characterize that, as judges.

Pam Ray: I understand that and that was my initial perception, but I thought I heard some Council members speaking, so it is pretty hard to sit here in a room where you've never met anybody and try and recognize voices. My question is, Allen, excuse me, but I've already shared this with you, my calendar wasn't consulted and I understand that to some degree, but I feel like I'm representing the citizens of Walla Walla County, that's why I'm sitting on the Council for the Wallula Project, and on November 7th, I believe, is when we received notice, on November 8th I immediately had our clerk of the board notify people that I wasn't available, but I did make myself available. There was another project kind of out there on it's own right now, but I think anything you can do in government to expedite processes is beneficial. I mean if people are interested in an issue they are on top of that issue and they know what the elements are to it. But this isn't the first time you've gone through this process but it's the first time we've gone through it and I'm feeling a little out in left field right now.

Chair Luce: Well, I don't think you should feel like you're a stranger. A number of us have, somebody used the word struggled, I don't know if that's right, but we're seeking to balance the rights of the public to have full information available and that's a process that's generally established by the State Environmental Policy Act in making this information available to the public as a whole. Agreed, some of the people who are in the room today already know what they think the issues are and they are going to raise them.

Pam Ray: And so do some of the public on both sides.

Chair Luce: So do some of the public, but the Environmental Policy Act suggests that there is a process to be followed. Now, I also hear you loud and clear about action items today and we're going to carefully consider what you have said and what the Council member from Columbia County have said in the course of our discussion of this. But we have some more people here in the room, Commissioner, who I think probably would be interested in commenting on this draft. Is there anyone else in the room who would be interested? Please step forward and identify yourself.

Liz Thomas: Thank you Chairman Luce, my name is Liz Thomas, I am with the firm Preston Gates and Ellis, representing Starbuck Power Company, Mike Elmer from Starbuck Power is also here today. I would really like to thank the Council for all the time and hard work it has put in to trying to sort through what the right approach the procedural issues is.

Hearing the concern about the notice issue, I'd suggest that there may be no need to decide today whether to adopt this proposal or not. As far as I know, and I may be mistaken, neither project has yet received a determination of completion, so whatever approach is taken, I thought I was hearing consensus that the determination of completion should trigger it and we're not there yet, so I don't think it would be a big concern to wait a little bit on this issue.

At the same time, Starbuck Power shares a sense of urgency that's been expressed by the Wallula Project. There may be a number of ways to try to expedite the process. I guess I'd encourage the Council to keep your eyes on the end point as to what we're really concerned about. If we can run the process sequentially, rather than concurrently, and have the same end point, then I think Starbuck Power isn't too concerned one way or the other about which approach is taken. To that end we would suggest quite early on, at least as early as the first pre-hearing conference, that the Council decide what the right time for the evidentiary hearings would be and set aside several hearing days on your calendars, which I'm sure are very hard to balance anyway, and then make it incumbent upon the applicant and the other parties to stick to those dates and get done in the meantime whatever work we need to get done. This might also entail setting a discovery schedule early on.

We share some of the concern that has been expressed by the preliminary final EIS as something that consumes quite a bit of time, and I guess there's a concern about whether the time it consumes is worth the value that it brings, although we do hear that it brings value. Maybe one way to manage that difficulty is again to try to plan to the end point the evidentiary hearing point, which, not the complete end point, but at least beyond that it seems that things fall into place pretty predictably. Although I have to agree that my own experience for power plants in Washington State these days, typically what I see is a mitigated DNS, rather than a full blown EIS, which enables them to proceed more quickly.

I think another way that we may be able to attain the goal of expediting is to limit the issues that are going to be available at hearing to issues that are raised through the EIS process. This was an element of the proposal that Starbuck put forward in our letter a couple of months ago and I think that may really help in terms of facilitating the discovery and the preparation pre-filed testimony, regardless of how the Council decides to structure the adjudicative hearing vis a vis the draft EIS comment period. If there is a ground rule that only those issues put forward as comments to the draft EIS may find their way into the adjudicative hearing, I think we do achieve the goal, sort of funneling the issues and narrowing the issues as we go forward, which in turn should expedite the process. In terms of whether the application has had an independent review, it is our sense that the Council and your consultants, Jones & Stokes, have acted pretty independently in reviewing the Potential Site Study and the other materials that have been submitted, although we certainly recognize the very legitimate interest of the public and interveners in seeing other documents as they are generated. I think with that, we just want to say thank you for taking up this issue, we see it has been a difficult issue and we really appreciate the depth of thought that has gone into it.

Chair Luce: Liz, do you understand this proposal to accommodate the interest that you express in your original letter which is parties should raise issues with specificity, I think what we said now is 15 days after the close of the draft EIS. Those issues are raised with specificity and they are foreclosed from being raised in the adjudicative hearing barring a showing of new information and a showing of good cause.

Liz Thomas: I guess I would like to suggest two stages. Stage one would be the EIS comment stage and all the issues that are raised through comments would be eligible for the pre-hearing conference, and then stage two would be the pre-hearing conference itself, fifteen days later where the parties pick and choose among those issues that were commented upon in the draft EIS as issues that they wish to have as issues for the evidentiary hearing. Again, focusing on that effort to narrow the issues throughout the process.

Chair Luce: Have you given any thought to the fact that what we're really dealing with here in a sense, is complex litigation, and how do we get the different parties who are in interest to most efficiently and effectively cooperate among themselves to both protect the public's interest and expedite the process?

Liz Thomas: I do have a couple of thoughts on that score. I think that the sooner that the adjudicative process is started, the sooner you have one person who is in charge, the Administrative Law Judge, who is then in a position to sit the parties down and say okay, here is what we're aiming at, we're looking at hearing here, there's this raft of issues, this person thinks they need discovery, that person thinks there needs to be another study, and kind of force the process along in that manner. A couple of specific tools that might be useful would be a facilitated workshop process where either the ALJ or perhaps a staff member could essentially host a workshop that could provide all interveners, the opportunity to elicit information from the applicant. We've done that in one proceeding with EFSEC that I was involved in and I think it worked pretty well, I guess I could invite other parties to that to comment. We had a session, the company offered a couple of witnesses, a number of people came and asked a lot of questions, some were answered on the spot, there were some areas of confusion that were ironed out and we walked away with a to-do list of data requests that we responded to, and I think that helped to expedite the process.

Chair Luce: Do we have any other members of the public who would like to comment on this draft proposal? Yes sir.

Brian Carpenter: I would just like to say that everyone in the room is aware of the issues and what the issues are likely to be, but the Council and the people in the room, need to remember siting a power plant is not a secret club process. There are various members of the public, local governments and local groups which aren't aware of what goes on at these meetings, have not dealt with a power plant before, may not be familiar with the issues, may not know what the issues are ahead of time, and I would just caution the Council to leave open the opportunity for those that are not in the know on power plants to have a real opportunity to comment and provide input and intervene if they so choose.

Chair Luce: Thank you. Back to the Council for discussion.

Chuck Carelli: I've got a suggestion at the risk of putting myself in the corner and no way to get out. The Council can't discuss this in private, so we're going to do it on the open forum. My suggestion or question is, what happens if we listen to the argument of Chuck Lean, Darrel Peeples, Liz Thomas and happen to decide not to have a preliminary final Environmental Impact Statement completed? I don't have a copy of your schedule, but by my schedule that theoretically cuts six to eight weeks off the process, and I know and I've been a strong supporter originally of pushing for the preliminary final Environmental Impact Statement, but what do we lose if we take it away?

Jenene Fenton: What six weeks are you cutting off? I'm looking at the schedule that's proposed at this point. You've got intervention going through week five, with the potential of another 15 days after the DEIS comment, that takes us into mid month seven. You've got pre-hearing conferences going through mid month eight. Where are the six weeks?

Chuck Carelli: I'm just assuming that once the draft is out for comment, once those comments are received, there is preparation of a response to comments, and preparation of the preliminary final Environmental Impact Statement. I'm assuming that is going to take about six weeks, maybe a little more.

Jenene Fenton: Well, we've already told parties based on what's proposed before us that they would have up to 15 days, and a suggestion of 25 days, after the close of the DEIS comments. That takes us pretty much to the start of month eight. The best you could get is a month out of it, and even then I'm hard pressed to see if you could even have the response to comments done by then and eventually you're dealing with late intervention and additional issues as a result of the comments. Granted you could say that we could go ahead and start the hearings before the preliminary final EIS, but reality tells me that it's not going to happen. There are going to be issues that come up during the comment period that is going to require a lot of discussion pre-hearing conferences, at least that has been the history so far. Maybe I'm wrong, I don't think so, and we can do smoke and mirrors and put something on the chart that says okay, we'll cut down the process. The reality is this is ambitious.

Chair Luce: A thought. Apparently Walla Walla County and Columbia County were told that this would not be an action item. I think that in fairness to the local jurisdictions, having been told that, that the Council should not, as impatient as I am, I don't think we should take final action, having had our local jurisdictions told that. So, I am going to suggest that we, this is another process, but I'm going to suggest that we take into consideration what we heard here today, from Liz Thomas, from Darrel Peebles, from Chuck Lean, from Counsel for the Environment and others, and that we schedule another special meeting of this Council in the near future. Now, point of clarification, is the Wallula application complete?

Allen Fiksdal: We have received a letter from Jones and Stokes saying yes, it is sufficient. They think it's sufficient so the Council could proceed. We have not received that for Starbuck.

Chair Luce: All right, and what would be the earliest date in the next week to two weeks in which we could schedule another meeting?

Chair Luce: Mariah, do you have an idea, or Irina, what's on the agenda for the next regular meeting?

Allen Fiksdal: The only thing we know of right now is, as we'll get to later in this agenda, is the Duke Energy/Energy Northwest application or amendment. Staff recommends that the Council discuss what they want to do at your Executive Committee meeting on the third and at the tenth take an action on that item for the Satsop Phase II, but right now I don't think of any other agenda item that we know about.

Chair Luce: So it sounds like we would have enough time.

Chuck Carelli: Can we discuss this idea at the Executive Committee meeting in preparation for the meeting on the tenth?

Allen Fiksdal: Yes, you can have as much discussion as you want at your executive committee meeting. If you want to discuss it more.

Chair Luce: That would be entirely appropriate, plus it would probably be a good way to get a crowd out for the Executive Committee meeting. Anyway, I do appreciate everybody's comments here. The Council is working very hard to come up with a fair process for both the citizens of the State of Washington, in terms of looking at this Environmental Impact Statement and the draft and the comments and also expediting the process. So it's something that we can only do with your help and your comments today have been very constructive and I appreciate them. I guess that concludes the discussion of this particular item.

Pam Ray: So, is it the tenth that we settled on?

Chair Luce: Yes, is this Commissioner Ray?

Pam Ray: Yes.

Chair Luce: Ah, we thought we had lost you there.

Pam Ray: No.

Chair Luce: All right, the tenth is what we've settled upon.

Pam Ray: What time?

Allen Fiksdal: 1:30 p.m..

Chair Luce: And Commissioner Ray, there will also, in all likelihood be a discussion of the option that Council member Carelli raised at the Executive Committee meeting of the Council which will be on the third of December. So if either you or the representative of the port or the representative of the Columbia County would like to be piped into that Executive Committee meeting, you are more than welcome to be piped in.

Pam Ray: Okay, and do we call the same number?

Allen Fiksdal: No, we will call you and tell you which number to call.

Pam Ray: Great, that will be great. Will we be also be provided with any supplemental documentation to review prior to the decision?

Allen Fiksdal: Yes.

Earle Marvin: What do we expect to see from the Council prior to the meeting on the tenth?

Chair Luce: What I would hope you would see is a draft, if you don't already have it, of the intervention and expedited hearing proposal as presented here today.

Pam Ray: We have that.

Allen Fiksdal: We'll get you the schedule that you do not have.

Earle Marvin: Why don't you give us both schedules?

Chair Luce: Let me get there. We've heard a couple of proposals laid out for alternative schedules, Councilman Carelli has laid out one possible variation. I think Allen, we can take the schedule that you've shown and put some little dotted lines and identify how that would work?

Allen Fiksdal: Sure.

Chair Luce: Then if we hear anything else from the public in the intervening time frame, if there are any letters sent to us, or any comments, we will make sure that we get those to you as well, and I assume that those letters or comments might include some additional information about schedules. Does that sound reasonable?

Jenene Fenton: The only comment that I have is that I think the proposal in front of us has cut a significant amount of time out of the process that we originally anticipated, and it's really not reflected here, so I think for the new members' benefits, and those of us who have forgotten what the old process was that was never implemented, it might be nice to have that laid out too.

Chair Luce: Okay. So Council members on the phone, you heard all that, right? I know you're in there somewhere. One of the things that's happened here, in case you weren't aware, we were in hearings last week and it was a long week, and we were all so hard at work on preparation of the special meeting. And one of the things that our Administrative Law Judge, Nan Thomas did, was to help us out in terms of taking each individual Council person's comments on a draft, did not discuss this among ourselves, but she took each individual piece of information and basically played Scribner, and helped us put this document together. Administrative Law Judge, Nan Thomas, thank you very much for your help, and Rusty, thank you for yours as well. So, that will conclude the discussion today, unless there are any other comments from the public or Council members. With respect to the expedited, we'll put that in italics, proposal for moving ahead on the process of Wallula and Starbuck, we'll look forward to December 3rd, I'm sure.

Pam Ray: Thank you very much.

Chair Luce: Thank you, and December 10th as well. You heard all of that? You did, I know you did. Can we take a five-minute break?

(Five minute break, meeting resumes.)

Chair Luce: We are now back in session. Irina, next subject.

<i>NPDES Permit Waiver</i>	<i>Irina Makarow EFSEC Staff</i>
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Irina Makarow: I would guide you to the pink sheet that you got this morning. In August, when the applicant Starbuck Power Company submitted their application for Site Certification for the Starbuck Power Project, in their cover letter to the application, they requested that the Council waive the requirements for submitting an NPDES permit application. Since that time we've had some clarification from the applicant and we've also received information from our consultants and Department of Ecology, and the staff has performed their own review. We have determined that the request for the waiver actually was specific to waiving the requirements for submitting an application for an individual NPDES permit for point source discharge to waters of the State. So this means, were the proposal to discharge wastewater to a stream or river or so on and so forth, a NPDES permit would indeed be required. But, this is not the case for the proposal. The application proposes that wastewater be discharged to the ground, and such discharges are not covered by individual NPDES permits.

The pink briefing paper that was distributed to you explains and specifies that the applicant was indeed seeking a waiver of the individual NPDES permit and that according to our review, and the review of our consultants, and some assistance from the Department of Ecology, such a permit is not required. There will be three types of water related permits that would be required for this proposal and these are summarized on page two. A State Waste Discharge permit for discharge of industrial water to ground water and this would cover the discharge of waste water to the ground, because it has the potential of percolating down to ground water; an NPDES Construction Storm Water general permit; and a Water Rights permit. For the State Waste Discharge permit, an application has been submitted for such a permit and is part of Appendix D of the application, and it has been supplied on a format that Ecology typically uses and this is sufficient for our use.

Staff is recommending that the Council authorize staff to prepare a contract with an appropriate contractor for review of preparations of the draft permit for this specific discharge. When we say an appropriate contractor, we mean either a Department of Ecology or our own independent consultant as their resources and contractual processes would permit.

The second permit is the NPDES Construction Storm Water general permit. Typically these permits are issued 60 days prior to the start of construction. Although the applicant has included an application for this type of permit in Appendix H, staff would be recommending that the review of such permit actually be effectuated 60 days prior to construction should the Council decide to approve this facility. At that time they would submit another application and it would probably better reflect the project in any mitigation that it would come to agreement with during the whole review process.

Starbuck Power Company submitted an application for a Water Right permit for a well on this site prior to submitting an application to EFSEC for Site Certification. The Department of Ecology is currently processing that application and staff assumes the Department of Ecology would be issuing that permit. Therefore, EFSEC need not review the application for a Water Right permit, as it is currently being done by the Department of Ecology.

Chair Luce: Thank you. Comments from the public? Comments from the Council? Do I hear a motion to adopt staff's recommendation?

Bob Wallis: So moved.

Heather Ballash: Second.

Rusty Fallis: I have a question. If I understand it, staff is recommending not only the waiver but also authority to enter into a contract. Are those both before the Council?

Irina Makarow: No, because of the action items you are going to receive later this afternoon, we're only requesting waiver of the application from the individual NPDES permit and then just authorization to proceed with preparing the contract.

Rusty Fallis: That was my next question. Depending on what happens in 15 minutes?

Irina Makarow: That's correct.

Chair Luce: So we have a motion and a second. Anybody want to call a question?

Heather Ballash: I have one more question for staff. In listing these other types of permits on the back of the fact sheet, for instance, the water right permit, we're not making a decision on that today, right? Just on the NPDES.

Irina Makarow: That's correct. And then authorizing staff to prepare a contract for review of the State Waste Discharge Permit for discharges to ground water.

Chair Luce: Did I hear a call for question? All in favor say Aye.

Council members: Aye.

Chair Luce: All opposed. Unanimous approval. Note for the records that the Councilman Ifie has been excused. He's not feeling well, so he won't be with us the rest of the afternoon.

Now, I was getting ahead of myself, but, Mike are you making the presentation with respect to Satsop Turbine Project Phase II application?

ITEM 5. WALLUAL POWER PROJECT

<i>Adjudication Schedule</i>	<i>Irina Makarow, EFSEC Staff</i>
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This was discussed along with the Starbuck Power Project adjudication schedule in Item 4.

ITEM 6. SATSOP COMBUSTION TURBINE PROJECT

<i>Phase II Application</i>	<i>Mike Mills, EFSEC Staff</i>
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Mike Mills: I'll start that, yes, thank you. The Council has received, and it's one of your handouts, a letter dated November 19th from Duke Energy North America addressed to Jim Luce, Submittal of a Request for Amendment Number 4 to the Site Certification Agreement. They're proposing to request authorization from the Council for approval to construct and operate a Phase II of the Satsop Combustion Turbine Project. Mike Sotak is here representing Duke Energy and Laura Schinnell with Energy Northwest and I believe they're prepared to brief the Council on this proposal.

Chair Luce: Thank you very much for coming.

Mike Sotak: Thank you for having us this afternoon. Also with us is Mitch Pointdexter who is working with Kevin Johnson as a developer on this project. Today, Duke Energy Grays Harbor and Energy Northwest, the holders of the site certification agreement for the Satsop Combustion Turbine Project filed a request for Amendment 4 to allow for the construction of a second phase and apply for an expedited processing pursuant to RCW 80-50-075. The Phase II expansion will consist of adding a duplicate of the permitted Phase 1 Satsop Project as can be seen in the

simulated sketch that I have provided to the Council today. Phase II as proposed, will be located entirely within the boundaries of the existing twenty-two acre site. The expansion will consist of two gas turbines, one steam turbine and have the output of about 650 megawatts. We believe that Phase II Expansion qualifies for expedited processing as it meets the four criteria listed in RCW 80-50-075. Each of those criteria is addressed in the application.

If I may summarize these criteria for a moment: Finding 1: The Environmental Impact of the Proposed Energy Facility. Council has already issued an SCA that permits the development of the entire site and the Council has already considered the impacts associated with site development. The additional impacts associated with the construction and operation of the proposed Phase II facilities, are limited to air emissions; water use and discharge; and sound emissions. Phase I will utilize the same air pollution control technologies required for Phase I and Phase II emissions will not result in significant impacts on the ambient air quality. Water for cooling will be obtained through the existing Rainy Wells and delivered through the original water line constructed for the Satsop Nuclear Plant. For Phase II Duke Energy has agreement with the Grays Harbor Public Development Authority to purchase 9.5 CFS from its existing 20 CFS water authorization. No new water rights will be required. The Phase II facility is designed to insure that it's operations will not result in significant change in noise levels to nearby industrial areas or to the nearest residential properties.

Finding 2: The Area Potentially Affected. The area to be potentially effected is limited to a portion of the already certified Satsop CT site. The Phase II expansion has been sized to fit within the previously permitted site on land that has already been disturbed and developed for industrial use as shown in the simulated drawing that I had provided to you. The expansion will utilize the natural gas pipeline and electrical transmission lines being installed for Phase I as well as existing water lines, thus avoiding impacts that would result if a new site were developed.

Finding 3: The Cost and Magnitude of the Proposed Facility. The cost of the project is approximately four hundred million dollars; the same cost as was already approved for Phase I.

Finding 4: The Degree to Which the Proposed Energy Facility Represents a Change in the Use of the Proposed Site. The proposed Phase II expansion represents no change in use of the site. Furthermore, as required by WAC 463-43-050, the Council has already found the proposed site to be consistent with any compliance with any city, county and regional land use planning and zoning ordinances. Since the Council's earlier determination there have been no changes to the local zoning that would make the expansion inconsistent with either plans or zoning.

An environmental report will be submitted in mid-December to assist the staff in their SEPA determination. In addition to the drawing that I provided to you, I also provided a project schedule. In just a couple of the bullets, what our intentions are would be to start construction in August of '02 and be in commercial operation June 1, of '04. Duke Energy and Energy Northwest wishes to thank the Council for the opportunity to make this presentation. We are available for any questions if you have any at this time.

Chair Luce: Councilperson Fenton.

Jenene Fenton: We are not having the wildlife trees visible, it's hard for me to tell where we are. I see little trees.

Mike Sotak: The trees buffer is there. When you were out on the project site the fenced area to the back, is where the tree buffer would be, (pointing to a diagram of the site) right in this area, and it remains. There is no impact to the tree buffer.

Jenene Fenton: So this the new part?

Mike Sotak: Yes, the present construction will take about half of the site, and then Phase II will take the other half of the site.

Heather Ballash: Is this construction scheduled for Phase I or Phase II?

Mike Sotak: This is the Phase II construction schedule. The Phase I will be in operation by July of '03.

Chair Luce: Do we have another presentation? Okay, thank you very much. Any other comments from staff at this point in time?

Mike Mills: I think we do have a comment, yes. Because this is a request for an amendment, we did include in your packets Chapter 463-36 of the Washington Administrative Code: Procedure for Amending and Terminating a Site Certification Agreement. Under 463-36-030. Request for Amendment, an amendment shall be made in writing by the certificate holder and they've done that and submitted the application. Council will consider the request at the next feasible council meeting, that's today's meeting. The Council will then refer the question to committee for recommendation, determine a schedule for action, or take action upon the request. The Council may, if appropriate and required for full understanding, review of the proposal, secure the assistance of a consultant, or take other action at the expense of the certificate holder. Council should hold one or more public hearing sessions upon the request for amendment, times determined by the Council. Staff recommendation would be that the Council acknowledge receipt of the request for amendment and application materials that were received today, and that this matter be referred to the Executive Committee at your next meeting, which is Monday, December the Third, to determine the process that the Council will utilize to review this application.

Chair Luce: Is staff going to have a recommendation with respect to the process that will follow?

Mike Mills: We will have a recommendation or at least discussion points, certainly.

Chair Luce: Council, does that sound like a reasonable way to proceed? So, we'll set that matter for December 3rd at our Executive Committee meeting. Legal counsel, do we need a motion to accomplish that?

Rusty Fallis: What's our practice been for amendments? Do we take and vote saying we hereby refer this to the executive committee?

Allen Fiksdal: I can't recall. I don't think you need it. I think the rules say you can do that and then you will discuss it at your Executive Committee meeting, and then, hopefully, at your December 10th meeting you will be able to take some action on determining what your process is going to be for reviewing this amendment. So the action would be at the December 10th meeting.

Chair Luce: Thank you.

And, we have copies here in our office for you, so don't leave without a copy of your new application for amendment for the Site Certification Agreement. Thanks actually goes to Duke Energy, Energy Northwest.

Chair Luce: We appreciate the presentation. Thank you very much. The next item on the agenda is an item pertaining to energy siting council contracts. Contract procedures and contract actions, who's going to handle the matter concerning contract procedures?

ITEM 7. EFSEC CONTRACTS

<i>Contract Procedures</i>	<i>Mike Mills, EFSEC Staff</i>
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Mike Mills: I'll handle that, thank you. In your packets there is a staff memo from Allen and myself to the chair regarding EFSEC contract procedures and we're proposing a change in the way that the Council reviews and approves either the independent consultant services and interagency contracts that we enter into for monitoring, and then the consultant contracts that are primarily for application and EIS review services. Typically, contract actions, new contracts or amendments are brought before the full Council at your regular or special meetings for consideration, they are adopted by motion and then staff implements the contract documents and, they are signed by the chair and/or the acting chair, in the chair's absence. The process we are recommending is that new contracts, and that is on page 2, that full Council approval would be required for all new or first time contracts greater than \$50,000.00 for siting and monitoring services.

The chair would be delegated authority to approve amendments to existing contracts, based on a favorable recommendation from staff, and after discussing with the Executive Committee. The EFSEC manager, with the agreement of the chair, may approve contract changes that are needed to remedy errors, fix inconsistent language, or address contract schedules with no significant changes in scope or budget. The chair is to execute contract documents on behalf of the Council, and that's consistent with the statutory authority under RCW 80-50. EFSEC staff, contract managers, which would be Irina, myself, and Michelle Elling, are responsible administering consultant and interagency agreements to include clarification of contract provisions. The EFSEC manager, or authorized staff, are authorized to enter into contracts or appropriate procurement agreements for goods and purchased services, and that's consistent with the OFM guidelines, and also the Community, Trade, and Economic Development authorizations that are in place already.

We see this as a way to make the consideration of contracts a bit more efficient. We feel that many of the amendments, particularly that come before the Council, are administrative in nature. They don't involve large sums of money, or if they do involve large sums of money, it's a contract where we have a 'not to exceed' limit that's already been established in the original approval and we are simply approving task orders. We believe the Council's aware that that's the way that the contract is going to work, but we also built in that that would be done in consultation with staff, with the chair and with the executive committee. We've attempted to list the existing contracts on page 5 that the Council already has in effect, and then on page 7, I have attempted to list a number of actions that would be covered under the existing contract procedure, or perhaps under the new procedure, if the Council would act favorably on it today. You'll notice on the Satsop Combustion Turbine Project, Phase II, we see that review as requiring an independent consultant, and in fact, staff has issued a request for proposal on Friday, and again today. We lost a page in the process somewhere here, but that RFP has been issued and so we see this as a contract that would come before the full Council. This is being treated as a new contract and it will, in all likelihood, exceed the \$50,000 limit that we've set. The other contractors listed: the SAIC Mercer Ranch amendment, the Jones & Stokes amendment, the hearing examiners, the court reporter services, ecology air quality, Lewis County and the City of Chehalis, we believe could all be handled under the new procedure where the chair would be authorized to approve those, again in consultation with the Executive Committee. That's staff proposal and our recommendation is that the Council approve the recommendation as offered.

Rusty Fallis: Mr. Chair, I have to run up to another meeting. Before I do that can I ask a couple questions to clarify something? Mike, on page two under the bullet points, under the first one, it's not clear to me whether the recommendation is, "that all contracts greater than \$50,000 require Council approval, or only those over \$50,000 that are for siting and monitoring services." In theory, you could have a contract over \$50,000 that doesn't involve siting and monitoring, although that may not be a likely possibility. What's the recommendation here?

Mike Mills: The recommendation is for siting and monitoring. I guess I hadn't considered the other situation where we would require some other type of service that would fall outside of siting and monitoring.

Rusty Fallis: Okay, I just want the Council to be clear that's your recommendation? In the second bullet point, is it your recommendation that the chair can approve amendments to existing contracts only if staff recommends that?

Mike Mills: I guess I would anticipate in that case that the chair would take the staff recommendation to the Executive Committee and there would be a discussion and then it would be determined if the procedure would apply or not.

Rusty Fallis: Well, one condition that's listed here is a discussion with the Executive Committee, and there's another condition that's a reference to staff recommendation. I guess my personal view is that the chair's authority to approve an amendment shouldn't hinge on a favorable recommendation from the staff. That's up to the Council to decide, but I want to lay that on the table because I think (inaudible) recommendation.

Mike: Yeah, I understand that.

Rusty Fallis: I believe you are referring to contracts for goods and purchased services, is it still your view that the chair would execute those? I'm just not sure how that dovetails with bullet point three about the chair executing the contract. I guess it's probably a good idea for the chair to execute the contracts.

Allen Fiksdal: Some of the contracts

Rusty Fallis: The Chair could delegate that.

Chair Luce: Your points are well taken, but what you intended to say, Mike, was based on views of staff and after discussion with the Executive Committee.

Allen Fiksdal: I think for goods and services we would want to have that delegated to our staff.

Chair Luce: I was talking about the second bullet, and the last bullet yes, the delegation would be appropriate. Thank you Rusty. Comments from Council members, Jenene?

Jenene Fenton: Just some questions. I understand staff's recommendation. I'm a little bit nervous about some of the contacts for monitoring, for instance. Because there have been somewhat contentious in the past because of a potential cuts budget and the impacts in those agencies. I know that I've heard concerns particularly about Health and the fact that they can't afford to lose any money on it. In the event that there is a reduction in those contracts, that ends up being somewhat contentious with the agency, Is Council going to know about that, or because it's an amendment, we don't see it at all, won't know about it?

Mike Mills: No, it's certainly my intent to bring all the actions that I'm involved in before the chair, my boss and the Executive Committee.

Allen Fiksdal: I would think if there's any contention, we're going to seek advice from the Council.

Jenene Fenton: That's my only concern. Basically with the number of budget cuts that are being proposed right now for all state agencies, but I'm assuming with the down turn in the economy the local agencies are going to be facing the same thing. I just can see these

monitoring contracts being a real bugaboo coming up and I don't want staff to be at the point of despair and that's the only issue I have.

Allen Fiksdal: No, I think that's the whole point of consultation with the Executive Committee and full Council is, if there are issues, if there is anything contentious that's really going on, I don't think we want to be out front as staff, other than maybe a recommendation.

Jenene Fenton: The only other thing that really is not pertain to this specifically, but kind of generally and we probably need to talk about and that's the role of the Executive Committee in the upcoming months, with this committee basically working towards full time and whether that is a dinosaur or be a continuing artifact of the Council.

Chair Luce: You use those words interchangeably, artifact and dinosaur? I guess my thought had been that some point in time, in the not too distant future, that the Council needs to have a discussion about how it's going to organize itself to take advantage of the fact that we are going to, in effect, be a full time Council. Part of our discussion would focus on what's the role of the Executive Committee under that new regime for the next couple of years. So, I think that's a good issue and I think it's one that I think we need to have a discussion among ourselves and with the public listening to us and in public meetings, and in the very near future, but I hadn't thought we would resolve it right here.

Jenene Fenton: The only concern I've got is that we're in the process of potentially approving an amendment to a contract processing procedures that relies still on the use of the Executive Committee that we know is essentially going to change in a couple of months. As long as we recognize that that may change again.

Chair Luce: I think it may change, but I think we need to give it some thought. Thank you. Councilman Carelli?

Mr. Carelli: I have one question and I think I resolved that in my own mind, by making a change on page three, Mike, in the first big paragraph, it correctly reads: proposals were received in response to an RFP are first reviewed by staff and perhaps if already selected several Council members, who would have volunteered to serve on the selection review committee. I would offer change to that starting with, an RFP are first reviewed by staff and one or more Council members who have volunteered or are appointed to serve in this capacity.

Chair Luce: Are you suggesting that there may not be a lot of volunteers?

Mr. Carelli: That's right.

Chair Luce: Oh, okay.

Chuck Carelli: It may be just one person, it may be two or three, depending on the nature of the of the contract.

Chair Luce: Good idea.

Mike Mills: That's a good change.

Chuck Carelli: What about the issues that Rusty raised?

Chair Luce: Oh, I interpreted the last bullet, EFSEC manager authorized to enter into contracts consistent with chair to execute contracts or delegate the authority. Based on favorable recommendations, I read that to be based on views of staff and after discussing.

Mike Mills: Yes, that is what I wrote down.

Chair Luce: I think staff is very powerful.

Chuck Carelli: What about contracts signed under \$50,000?

Chair Luce: The Chair signs those contracts. I just think that in most cases that will be amendments.

Allen Fiksdal: Yes, the ALJ contracts are going to be more. Well, the ALJ contract, actually, it is just for services, it doesn't have a final dollar amount. They bill us and, so you don't say we contract for X amount of money, we contract for a certain amount per hour. The same with the court reporter is a not to exceed, \$25,000 right now.

Chair Luce: Other comments from the Council? Do I hear a motion to adopt as modified?

Bob Wallis: So moved.

Jenene Fenton: Second.

Chair Luce: Call for the question? All in favor say Aye.

Council members: "Aye."

Chair Luce: All opposed? Motion carries. All right, moving right along. The contract actions, the specific contract actions. Which are you going to take up first?

Allen Fiksdal: Well, now that you've delegated that authority to yourself, we don't have to do that.

Mike Mills: We don't have to do those four and I think we've already touched upon the information items for the Satsop Combustion Turbine Project, that we have issued the request for proposals. You're certainly free to ask the question.

Jenene Fenton: The question I had, is I thought that we were going to, in the future consulting firm contract proposals, include the potential development of the PSD permit, there might be some (inaudible).

Allen Fiksdal: That is not the full RFP. That is just a summary, that's actually the ad that went in the paper. The full RFP says: "we usually contract with the Department of Ecology for PSD permits. It lists a whole bunch of things including air permits, and then it kind of notes that, don't expect it, but we could ask for this service."

Jenene Fenton: I thought we were going to make sure that we had that settled in the upcoming ones, because we did not to be reliant on the Department of Ecology.

Allen Fiksdal: It was not for PSD, it was NPES and other issues. PSD is very straight and clean and agreeable between Ecology and us, and we have never had any conflict with PSD. We don't expect to.

ITEM 8: OTHER

Chair Luce: Are we hopefully down to that item on the agenda that says 'other'? Is there an other?

No replies.

ITEM 9: ADJOURN

Chair Luce: We are adjourned. (We adjourned at 3 p.m.)